

Procedures for Buying and Selling and Registration of Land *Absentee* as an Object of Land Ownership

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Abstract

This study aims to analyze the procedures for the sale and purchase as well as the registration of absentee land as an object of ownership rights within the framework of Indonesian agrarian law. The issues addressed include the fulfillment of material and formal requirements in land transactions, the role of the Land Deed Official (PPAT), and the mechanism for registering the transfer of land rights. This research employs a normative legal method using both statutory and conceptual approaches. The statutory approach examines relevant regulations, while the conceptual approach explores legal doctrines related to land law, particularly concerning absentee land ownership. The results indicate that the implementation of absentee land transactions must comply with both material and formal requirements. The material requirements concern the legality of the parties and the object of the transaction, where the seller must be the lawful holder of land rights, and the buyer must qualify as a subject of ownership rights without violating the prohibition of absentee land ownership. Meanwhile, the formal requirement is fulfilled through the execution of a Sale and Purchase Deed (AJB) before the Land Deed Official (PPAT), which serves as the legal basis for the registration of the transfer of rights at the Land Office. Land registration plays a crucial role in ensuring legal certainty, legal protection, and orderly land administration. However, in practice, several obstacles remain, including limited public understanding of legal provisions and administrative constraints. Therefore, enhancing legal awareness and strengthening the role of PPAT and land administration institutions are necessary to achieve legal certainty in land transactions.

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1. INTRODUCTION

Land ownership is the strongest and most complete right a person can possess. However, in practice, land ownership remains limited by its social function as stipulated in agrarian law. One form of this limitation is the prohibition on individual land ownership of *absentee*, namely, land ownership by someone who does not reside in the area where the land is located. This prohibition is part of the agrarian reform policy, which aims to prevent the accumulation of land ownership by certain parties and encourage optimal use of the land by the owner [1].

In practice, absentee land ownership still frequently occurs, particularly through transfer mechanisms such as sale and purchase. This raises various legal issues, particularly regarding the validity of the transfer of rights and compliance with applicable laws and regulations. Chronologically, absentee land ownership can occur due to several

circumstances: first, the owner of agricultural land moves or leaves his residence outside the sub-district where the land is located; second, if someone has rights to agricultural land outside the sub-district where he resides, which he obtained through inheritance; third, someone who purchases agricultural land whose residence is located outside the sub-district bordering the sub-district where the agricultural land is located as an investment vehicle. Therefore, in the implementation of land sales with the status of *absentee*, you must pay close attention to the valid conditions for buying and selling, both material and formal conditions.

Material requirements relate to the legal subject and object in the sale and purchase of land [2]. The seller must be the legal party as the holder of the land rights as evidenced by a certificate, while the buyer must fulfill the requirements as the subject of ownership rights, namely an Indonesian citizen or a certain legal entity determined by the government. In addition, in the context of land *absentee*, there is a special requirement that the buyer must be domiciled in the same area as the land to avoid the occurrence of ownership. Meanwhile, formal requirements relate to the process of proving and legalizing the transfer of land rights, namely through the preparation of a deed of sale and purchase by a Land Deed Official (hereinafter referred to as PPAT). This deed serves as the basis for registering the transfer of rights at the Land Office. Land registration plays a crucial role in providing legal certainty and legal protection for rights holders, as well as serving as a means of creating orderly land administration.

Even though it has been clearly regulated normatively in various laws and regulations, in Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP 24 of 1997), in practice there are still various obstacles in the implementation of land sales and registration of *absentee*. These obstacles can include a lack of public understanding of legal provisions, differing interpretations of regulations, and administrative issues in the land registration process. Based on this description, it can be seen that the problems concern the procedures for buying and selling land and registering it as an object of land ownership rights. It is still relevant to study it in depth in order to provide a comprehensive understanding and contribute to the development of agrarian law in Indonesia.

2. RESEARCH METHODS

This research is normative [3]. It aims to analyze the procedures for buying and selling, and registering land *absentee* as an object of land ownership rights. Furthermore, the approach used is a statutory approach (*statute approach*) and conceptual approach (*conceptual approach*) [4]. A statutory approach will be used to review and analyze regulations, including the UUPA, PP 24 of 1997, and related laws and regulations. A conceptual approach is used to examine legal issues with existing perspectives and doctrines, particularly land law, specifically the sale and purchase of land with a land status of *absentee*.

3. DISCUSSION

When carrying out the sale and purchase of land ownership rights with the status of *absentee*, one must pay attention to the legal conditions for buying and selling land. The conditions that must be met by the holder of the Ownership Rights to the land, in this case the seller, and the other party, in this case the buyer, are material conditions and formal conditions. Material conditions are conditions that must be met by both parties. For a seller, the material conditions that must be met are the name contained in the title or proof of ownership, namely, the certificate. The certificate is a valid proof of rights that serves as a strong means of proof regarding the physical data and legal data contained therein, as long

as the physical data and legal data are in accordance with the data in the relevant land certificate and book as contained in Article 32 paragraph (1) of PP 24 of 1997. With the existence of the certificate as evidence, the person is authorized to carry out legal actions, namely, selling his land. In carrying out these actions, the person must be competent or an adult. If the seller is not competent or not yet an adult, then he must be represented by his guardian. If the seller is still under guardianship, he must be represented by another person as the recipient of the power of attorney. The recipient of the power of attorney must be an adult to carry out a legal act, and the power of attorney deed is made by a notary. If the land comes from joint assets, then in the case of selling the land, there must be an agreement between both parties, between the husband and wife.

Furthermore, the material requirements that must be met by the buyer are that they must meet the requirements as a subject of ownership rights to the land, where the land ownership rights are the object of the sale and purchase. The subjects of ownership rights are Indonesian citizens and legal entities determined by the government (religious, social, and other bodies) [5]. Regarding the requirements for buyers, there are more specific requirements, namely, the buyer must be in the sub-district according to the location of the land. This is intended to enable the buyer to make maximum efforts to obtain the land or have maximum efforts made by the buyer.

The special conditions imposed on buyers must be in the same sub-district as the land, as is the aim of agrarian reform regarding the prohibition of land ownership of *absentee*. Furthermore, after the material requirements for both the seller and buyer have been met, the formal requirements must be met. In reality, the material requirements in a land sale and purchase are closely related to the formal requirements [6]. In practice, the sale and purchase of land rights is called a land sale, but legally, what is being traded is the land rights, not the physical land itself. The purpose of purchasing land rights is to be able to legally use and control it physically and legally.

Formal requirements in the sale and purchase of land, in this case, are related to the existence of proof of the land sale and purchase. Fulfillment of these formal requirements aims to register the sale and purchase of land with the City or Regency Land Office according to the location of the land. After the registration is carried out, the sale and purchase of the land title, whether certified or not, can be proven by the existence of a deed made before the PPAT, as stated in the provisions of Article 37 paragraph (1) of PP 24 of 1997. Furthermore, there is an exception to the deed made by and before the PPAT not being absolutely valid as stated in Article 37 paragraph (2) of PP 24 of 1997 with consideration of certain circumstances as determined by the Head of the BPN RI and the Head of the City or Regency Land Office can register the transfer of rights through the sale and purchase of land title where the parties are Indonesian citizens as evidenced by a deed not made by the PPAT, but the truth is considered sufficient to register the transfer of rights in question.

In the provisions of Article 1, number 24 of PP 24 of 1997, it is stated that PPAT is a public official who is given the authority to make certain land deeds. Furthermore, the definition of PPAT is explained in the provisions of Article 1 paragraph (1) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials (hereinafter referred to as PP 24 of 2016). Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials (hereinafter referred to as PP 37 of 1998) and in its implementing provisions in Article 1 paragraph (1) of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials (hereinafter referred to as

PERKABAN No. 1 of 2006) explains that Land Deed Making Officials, hereinafter referred to as PPAT, are general officials who are given the authority to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights for Apartment Units. PPAT itself is divided into 3, according to PP, it is called PP 24 of 2016, because PP 37 of 1998, and in its implementation regulations in PERKABAN No. 1 of 2006, namely:

- a. PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.
- b. A temporary PPAT is a government official appointed because of his position to carry out the duties of a PPAT by making PPAT deeds in areas where there are not enough PPATs.
- c. Special PPAT is an official of the National Land Agency who is appointed because of his position to carry out the duties of a PPAT by making certain PPAT deeds, specifically in the context of implementing certain government programs or tasks.

According to A.A. Andi Prajitno, PPAT is included in the category of State Administrative Officials when carrying out government affairs in the form of a series of land registration processes, making PPAT deeds, but PPAT deeds are not included in the object of lawsuits in the State Administrative Court, because PPAT deeds are not a Decree (*order*) [7]. The authority of the PPAT regarding land registration activities is to make a deed as evidence that certain legal acts have been carried out regarding land rights or Ownership Rights for Apartment Units, which will be used as the basis for registering changes to land registration data resulting from the following legal acts:

- a. Buying and selling;
- b. Exchange;
- c. Grant;
- d. Income into the company(*contribution*);
- e. Distribution of joint rights;
- f. Granting of Building Use Rights/Use Rights over Freehold Land;
- g. Granting of Mortgage Rights;
- h. Granting of authority burdens the Rights of Dependents.

Specifically for the granting of power to encumber Mortgage Rights [8] in Article 1, number 1 of the Government Regulation concerning the Regulations on the Position of Land Deed Making Officials, it is stated that PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights for Apartment Units. Meanwhile, in the provisions of Article 1, number 4 of Law No. 4 of 1996, it is stated that PPAT is a public official who is given the authority to make deeds of transfer of land rights, deeds of encumbrance of Mortgage Rights, and deeds of granting power of attorney for encumbrance of Mortgage Rights according to applicable laws and regulations. PPAT's main duty is to carry out some land registration activities by making deeds as evidence that certain legal acts have been carried out regarding land rights or Ownership Rights for Apartment Units, which will be used as the basis for registering changes to land registration data resulting from these legal acts.

One form of legal act regarding land rights made by PPAT in this case is a deed of sale and purchase of land ownership rights, or what is called a deed of sale and purchase (hereinafter referred to as AJB). This AJB is made and attended by the holder of land ownership rights, in this case the seller, and another party, in this case the buyer, and witnessed by a minimum of 2 (two) witnesses to fulfill the requirements as witnesses in the sale and purchase. If the holder of land ownership rights, in this case the seller, and the other party, in this case the buyer, are unable to attend the making of the AJB, then they can be represented by another person who meets the requirements to carry out the sale and purchase with a written power of attorney affixed with sufficient stamps.

Furthermore, to guarantee legal certainty for the parties, namely the holder of land ownership rights, in this case the seller, and the other party, in this case the buyer, land registration is carried out. The definition of land registration is contained in Article 1 paragraph (1) of PP 24 of 1997 which states that land registration is a series of activities carried out by the Government continuously, sustainably and regularly, including the collection, processing, bookkeeping, and presentation as well as maintenance of physical data and legal data, in the form of maps and lists, regarding land plots and apartment units, including the provision of certificates of proof of rights for land plots for which rights already exist and ownership rights to apartment units and certain rights that encumber them.

Article 2 of PP 24 of 1997 states that land registration is carried out based on the following principles:

- a. The principle of simplicity in land registration is intended so that the main provisions and procedures can be easily understood by interested parties, especially land rights holders.
- b. The principle of safety is intended to show that land registration needs to be carried out carefully and precisely so that the results can provide a guarantee of legal certainty in accordance with the purpose of land registration itself.
- c. The principle of affordability is intended to ensure accessibility for those in need, particularly by taking into account the needs and capabilities of economically disadvantaged groups. Services provided in the context of land registration must be affordable for those in need.
- d. The principle of up-to-dateness is intended to ensure adequate completeness in its implementation and continuity in data maintenance. Available data must reflect the most current situation. Therefore, it is necessary to comply with the obligation to register and record any changes that occur in the future. The principle of up-to-dateness requires the continuous and ongoing maintenance of land registration data, so that the data stored at the Land Office always corresponds to the actual situation on the ground.
- e. The principle of openness is intended so that the public can obtain and know information regarding correct physical data and legal data at any time at the City/District Land Office.

The objectives of land registration are contained in Article 3 and Article 4 of PP 24 of 1997, namely:

- a. To provide legal certainty and legal protection to the holder of rights to a plot of land, apartment units, and other registered rights, so that they can easily prove themselves as the holder of the rights in question. Therefore, the holder of rights to the land in question is given a land rights certificate as a guarantee of legal certainty guaranteed by law [9]. According to Urip Santoso, the guarantee of legal certainty as the purpose of land registration includes:
 1. Certainty of the status of registered rights;
This means that by registering the land, you will be able to know with certainty the status of the registered rights, such as Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, Management Rights, Mortgage Rights, Ownership Rights for Apartment Units, or Waqf Land.
 2. Certainty of the subject of rights;
This means that by registering the land, it will be possible to know with certainty who the rights holder is, whether an individual (Indonesian citizen or foreigner domiciled in Indonesia), a group of people together, or a legal entity (private legal entity or public legal entity).

3. Certainty of the object of rights;

This means that by registering the land, the location of the land, the boundaries of the land, and the size or area of the land can be known with certainty, to provide legal certainty and legal protection in land registration. The relevant rights holder will be given a certificate as proof of their rights [6].
- b. To provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding land plots and registered apartment units. The presentation of this data is carried out by the land registration administration section of the Regency/City Land Office, known as general registration, which consists of land registration maps, land lists, measurement letters, land books, and name lists [10].
- c. To ensure orderly land administration. The government program in the land sector is known as the Catur Tertib Pertanahan, namely Orderly Land Law, Orderly Land Administration, Orderly Land Use, and Orderly Land Maintenance and Environmental Sustainability [11]. To realize Orderly Administration, it can be done by holding land registration, such as every plot of land and apartment unit, including the transfer, encumbrance, and cancellation of rights to land plots and ownership rights to apartment units, which must be registered in accordance with the application of the latest principles. Regarding the updating of land status, the parties concerned will receive benefits from holding land registration, namely:
 1. Benefits for rights holders.
 - a) Provides a sense of security;
 - b) Can clearly know the physical data and legal data;
 - c) Facilitate the implementation of the transfer of rights.
 - d) Land prices become higher.
 - e) Can be used as collateral for debt by being burdened with a mortgage.
 - f) Determination of Land and Building Tax (PBB) is not easily mistaken.
 2. Benefits for the government [12].
 - a) Orderly land administration will be realized as one of the Four Land Order programs.
 - b) Can facilitate government activities related to land in development.
 - c) Can reduce disputes in the land sector, for example, disputes over land boundaries, illegal land occupation.
 3. Benefits for prospective buyers or creditors.

For prospective buyers or prospective creditors, they can easily obtain clear information regarding the physical data and legal data of the land, which is the object of legal actions regarding the land.

After the AJB is made by the PPAT for the sale and purchase of the Ownership Rights, then within a maximum of 7 (seven) working days from the date the AJB is signed by the parties. Next, the PPAT submits the AJB he made, along with the documents, to the Land Office according to the location of the land, in this case, the Land Office. In terms of Ownership Rights, there are provisions in Article 19 paragraph (2) of the UUPA where land registration activities are carried out by the Government, including:

- a. Land measurement, mapping, and bookkeeping;
- b. Registration of land rights and the transfer of such rights;
- c. Providing a letter of proof of valid rights is a strong means of proof.

Furthermore, land registration activities are further elaborated in Government Regulation 24 of 1997. This buying and selling activity falls under the category of land registration data maintenance activities. Article 1, number 12 of Government Regulation 24 of 1997 states that land registration data maintenance is a land registration activity to

adjust the physical and legal data in registration maps, land lists, name lists, measurement letters, land books, and certificates with changes that occur later. This maintenance is carried out if there are changes in the physical and legal data of the registered land registration object, and these changes must be registered with the local Regency/City Land Office.

Land transfer registration is *absent* as the ownership rights are registered with the Land Office to make changes to the legal data, in this case changing the name of the land owner from the previous rights holder, namely the seller, and the new rights holder, in this case the buyer. After the certificate is issued, it will be submitted to the PPAT and then given to the relevant party, namely the buyer.

4. CONCLUSION

The sale and purchase of absentee land as an object of ownership is only valid if it meets the material and formal requirements, namely the legitimacy of the parties and the object of the rights, and is proven through a Deed of Sale and Purchase drawn up by a Land Deed Official (PPAT) as the basis for registration at the Land Office. The role of the PPAT is crucial in ensuring legal certainty and protection, while land registration functions to update legal data and create orderly land administration. However, in practice, there are still obstacles in the form of low public legal understanding and administrative obstacles. Therefore, strengthening legal compliance, optimizing the role of PPAT, and improving the quality of land services and supervision are the main keys to realizing legal certainty and justice in land management of *absentee*.

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